

LAW REFORM ALERT: Defining “Weapons” in School

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The Education Law Center is pleased to share the Commonwealth Court of Pennsylvania’s decision in our case, S.A. by H.O. v. Pittsburgh Pub. Sch. Dist., 160 A.3d 940 (Pa. Cmwlth. 2017). In this unanimous opinion, the court limited the ability of schools to expel students under the weapons provision of the Pennsylvania School Code by holding that everyday objects cannot be treated as weapons for the purposes of school discipline.

Background

In Pennsylvania, Act 26 carries the harshest punishment of any school discipline policy in Pennsylvania. Under this law, a student who possesses a weapon in school must be expelled for at least one year. Additionally, unlike any other disciplinary offense, a student serving an expulsion under Act 26 can also be denied access to a different school district or charter school while expelled.

The Education Law Center has long recognized an alarming pattern in the enforcement of Act 26. Districts expansively interpreted what constitutes a “weapon” with little oversight or guidance. As a result, districts were expelling students for possessing a weapon - the harshest disciplinary provision in the PA School Code - when students used ordinary objects inappropriately. Thus, a student who gets into a fight while holding a cellphone, a book - or in the case of S.A. - a pencil, found themselves facing a yearlong expulsion, even when they never brought a “weapon” to school.

Particularly disturbing is the disproportionate use of the weapons provision against students of color and students with disabilities. It is well known that schools across Pennsylvania and the country discipline students of color and students with disabilities at disproportionately high rates compared with white peers and students without disabilities. This bias is particularly acute when the discipline involves discretionary offenses, such as defiance or misconduct. The Education Law Center has observed similar disproportionality with respect to Act 26, with districts being more likely to classify an everyday object as a weapon when it is possessed by a student of color.

New Precedent-Setting Case Law

In recognition of this problem, the Education Law Center decided to take on the case of S.A., a refugee student who was expelled from the Pittsburgh Public Schools for possession of a weapon after she used a pencil to scratch a student who had been sexually assaulting her. The Commonwealth Court eventually rejected the District’s argument that it was within the District’s discretion to find that a pencil constituted a weapon under Act 26. The court unanimously ruled that for purposes of the Pennsylvania School Code, a weapon is defined by “its inherent operational capabilities; that is, what the object is intended to do in the practical and functional sense.” S.A. by H.O. v. Pittsburgh Pub. Sch. Dist., 160 A.3d at 944-45.

The Court further stated that if the object, when looked at in a “vacuum,” is intended to inflict serious bodily harm, then the object can be considered a weapon. If, however, the object, is not intended or likely to cause injury through its normal use, “the manner in which a person uses [the] object cannot convert an otherwise non-weapon into a weapon.”¹ The court explicitly held that an ordinary object cannot become a weapon based on “the manner in which the object was used by the student or the severity of the actual injury inflicted on the victim,” and that construing a pencil to be a weapon under Act 26 would lead to a “patently unreasonable and absurd” result.²

Call to Action for School Districts

Following this ruling, school districts across the state must review and revise their disciplinary practices to ensure that they reflect the court’s decision in S.A. School policies must be modified to reflect the fact that everyday objects and inherently non-dangerous objects, including “replica” and “look-alike” guns - terms embedded into many district policies, cannot be considered weapons under the Pennsylvania School Code.

Additionally, districts should inform and train staff, particularly those charged with disciplinary responsibilities and decision-making responsibilities, that they may not

¹ S.A. by H.O. v. Pittsburgh Pub. Sch. Dist., 160 A.3d at 945.

² Id. at 949.

use the weapons provision to expel students who use otherwise non-weapons - *i.e.*, pencils, cafeteria trays, rulers, or backpacks - in offensive manners, even if the district has a long-standing practice of administering such expulsions.

The S.A. decision takes away ambiguity in this matter. It clearly holds that any decision to expel a student under Act 26 for possessing or using an object that is not inherently dangerous or intended to do harm is a violation of Pennsylvania law and a deprivation of the student's right to a free, public education. Given this holding, the burden is now on Pennsylvania school districts to ensure that their disciplinary policies and practices align with state law.

To learn more about the decision, contact Staff Attorney, Cheryl Kleiman at ckleiman@elc-pa.org or 412-258-2124.

The Education Law Center-PA ("ELC") is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of vulnerable children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English language learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general idea of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact us for a referral or contact an attorney of your choice. Visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).